

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Petition of the California Public Utilities	)	
Commission and of the People of the State of	)	
California for Authority to Implement Specialized	)	
Overlay Area Codes	)	

**COMMENTS OF THE  
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA")<sup>1</sup> hereby submits its Comments in the above captioned proceeding<sup>2</sup> in opposition to the Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Specialized Overlay Area Codes.

**INTRODUCTION**

On October 6, 2003, the California Public Utilities Commission ("CPUC") filed a petition<sup>3</sup> asking for delegated authority to implement two specialized overlays ("SO") pursuant

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<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> See *Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Specialized Overlay Area Codes, Public Notice*, CC Docket No. 99-200, DA 03-3262 (rel. Oct. 16, 2003).

<sup>3</sup> See *Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Specialized Overlay Area Codes* (filed Oct. 6, 2003) (hereinafter "CPUC Petition").

to the criteria the Commission set forth in the *Third Report and Order and Second Order on Reconsideration*.<sup>4</sup> In that Order, the FCC lifted its prior blanket prohibition on SOs, and announced it would consider SO proposals on a case-by-case basis.<sup>5</sup> The Commission also set forth the specific criteria each request for delegated authority to implement a SO should address. However, in so doing, the Commission emphasized as a threshold matter that “any delegated authority granted to state commissions to implement SOs will be limited to areas in which the a state has properly determined that area code relief is needed.”<sup>6</sup> The Commission also emphasized that states seeking to implement a SO must also demonstrate that the benefits will outweigh the costs of implementing the SO.<sup>7</sup> CTIA opposes the SO requested in the CPUC Petition because it is not needed for area code relief; because the CPUC has not demonstrated that the benefits will outweigh the costs of implementing the SO; and because the CPUC Petition does not set forth in sufficient detail the CPUC’s plans for the SO, making it impossible for CTIA, or the Commission, to assess whether the SO proposal satisfies the specific criteria each request for a SO should address. Finally, the CPUC Petition fails to address the impact of number portability on its SO request, and the ability of businesses with facsimile machines, VOIP providers, and others, to avoid the discriminatory effects of the SO by porting numbers from the SO back to their legacy area code.

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<sup>4</sup> *Number Resource Optimization, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, 17 FCC Rcd 252 (2001) (hereinafter “Third Report and Order and Second Order on Reconsideration”).

<sup>5</sup> *Id.* at 287-88.

<sup>6</sup> *Id.* at 288.

<sup>7</sup> *Id.*

## DISCUSSION

In reversing its prior prohibition on SOs, the Commission emphasized that “any delegated authority granted to state commissions to implement SOs will be limited to areas in which the state has properly determined that area code relief is needed.”<sup>8</sup> Nowhere in its Petition does the CPUC state that the SO is needed for area code relief, nor is there any estimate predicting how long the proposed SOs would extend the life of any area code in the State of California. Indeed, even if it tried, the CPUC could not satisfy this threshold requirement for Commission approval of a SO. Just three months ago, the FCC found the CPUC had not demonstrated good cause to justify raising the contamination threshold throughout the state.<sup>9</sup> In acting on a request by the CPUC to increase the “contamination level” for all NPAs in California, the Commission found that:

Although both the 909 and 310 area codes are projected to exhaust in the fourth quarter of this year, the next closest projected exhaust date for an area code will occur in the 760 area code in the third quarter of 2005. Moreover the majority of the state’s area codes are not projected to exhaust for at least several years.<sup>10</sup>

It is clearly too late to provide any relief to the 909 and 310 area codes, both of which will exhaust long before the proposed SOs could take effect, and as the Commission just found in the

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<sup>8</sup> *Id.*

<sup>9</sup> *See Petition of the California Public Utilities Commission for Waiver of the Federal Communication Commission’s Contamination Threshold Rule, Order, CC Docket No. 99-200, FCC 03-196 (rel. Aug. 11, 2003).*

<sup>10</sup> *Id.* at ¶15 (*footnotes omitted*). In the same Order, the Commission raised the “contamination level” in the 310 and 909 area codes on an interim basis to provide additional time to implement area code relief in those NPAs. In so doing, the FCC emphasized that its Order “should not be used to justify delaying this much needed relief” and reminded the CPUC that numbering resource optimization measures should not be used as a substitute for area code relief. *Id.* at ¶11. While the CPUC just approved a plan on October 16, 2003, to split the 909 area code, the CPUC refused to split the 310 area code, ignoring the Commission’s clear direction instructing the CPUC to expedite area code relief in both the 310 and 909 codes.

Contamination Threshold Order, “there are no exigencies that warrant imposing these burdens throughout the state of California.”<sup>11</sup>

Moreover, because the CPUC Petition is so lacking in the specificity the Commission has required a state petition for additional delegated authority to provide, neither the CPUC nor the Commission can estimate how long the proposed SOs would extend the life of any area code in the State of California. The CPUC proposes to place all “transparent” or “nongeographic based” numbers in the proposed SOs, but not “cellular services.”<sup>12</sup> While CTIA hopes the CPUC intends to exclude not just “cellular services” but also broadband PCS and ESMR services, since there can be no basis for discriminatory treatment of these CMRS services that compete with one another, how the CPUC clarifies its proposal will certainly affect how the SOs would extend the life of any area code.<sup>13</sup> Similarly, while the CPUC seeks to include all OnStar customers in the new SOs, OnStar offers customers both an emergency service, and additional services which are identical to traditional wireless services. OnStar customers subscribing to traditional wireless services should not be included in the SOs, further diminishing its value.

The CPUC concedes it cannot satisfy the Commission’s criteria for granting the petition when it states “industry can neither estimate the current level nor the future demand of numbers used for [the type of services to be included in the SOs]” and asks the Commission grant it “some leeway.”<sup>14</sup> The CPUC Petition is similarly vague on the subject of “take-backs.” On the

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<sup>11</sup> *Id.* at ¶16.

<sup>12</sup> CPUC Petition at 2.

<sup>13</sup> The CPUC Petition includes paging companies in the proposed SOs, but states it has not investigated whether this is in the public interest. See *id.* at 3, n.5.

<sup>14</sup> *Id.* at 3. There is no suggestion why the Commission should trust the CPUC here, when it repeatedly has ignored the Commission’s clear direction to expedite area code relief in both the 310 and 909 codes.

one hand, the CPUC seeks authority to assign all transparent or non-geographic based numbers on a *prospective* basis, but in the very next sentence the petition seeks authority to take back these numbers on a *retroactive* basis based on an investigation it has not yet conducted.<sup>15</sup>

Given the inchoate state of the CPUC Petition, neither CTIA nor the Commission can determine whether the benefits will outweigh the costs of implementing the SO. While the CPUC recognizes there will be significant costs, it makes no attempt to quantify them. The Commission has set forth the criteria a request to implement a SO should address to enable it “to examine the feasibility of SOs in a particular area, and determine whether the Commission’s state goals are likely to be met if the SO is implemented.”<sup>16</sup> The CPUC Petition lacks the detailed information the Commission requires to assess whether the SO proposal furthers the Commission’s numbering resource optimization goals.

The CPUC Petition also fails to address the impact of number portability on its SO request, and the ability of businesses with facsimile machines, VOIP providers, and others, to avoid the discriminatory effects of the SO by porting numbers from the SO back to their legacy area code. The CPUC Petition seeks authority to implement a permanent seven-digit dialing requirement in the proposed SOs.<sup>17</sup> The CPUC could not be more wrong in its conclusion that disparate dialing patterns are no longer discriminatory, and that the “FCC’s concern that only new competitors would be required to take numbers in an overlay, while established carriers could draw on plentiful number supplies in the existing area codes, has been mitigated just by the

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<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Third Report and Order and Second Order on Reconsideration*, 17 FCC Rcd at 288.

<sup>17</sup> CPUC Petition at 7.

passage of time and competitor acquisition of number holdings.”<sup>18</sup> Not only are there new providers, such as VOIP providers, who are entering the market, there also are customers who have a strong preference for familiar, legacy area codes. With intermodal number portability, customers can avoid the discriminatory effects of a SO by porting numbers drawn from the legacy area codes.

The FCC has never addressed how number portability requirements affect SOs. Given the fact that the essence of SOs is the isolation of particular services in the SO, it is unclear how an SO that includes a competitive service, such as PCS, ESMR, OnStar, or VOIP, can ever be squared with the Commission’s pro-competitive policies.

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<sup>18</sup> *Id.* at 9.

## **CONCLUSION**

For the foregoing reasons, the Commission should deny the CPUC Petition for Authority to Implement Specialized Overlay Area Codes.

Respectfully submitted,

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Dated: November 17, 2003